

JAY STOVALL,
Appellant

v.

BILLINGS AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 97-133-A
:
:
: June 24, 1997

On June 16, 1997, the Board of Indian Appeals received, by transmittal from the Acting Billings Area Director, Bureau of Indian Affairs, a notice of appeal signed by Jay Stovall (Appellant). The notice of appeal indicates that Appellant seeks review of a May 5, 1997, decision of the Billings Area Director, affirming the cancellation of Lease No. 0-11247 on the Crow Reservation.

The Acting Area Director's transmittal included a copy of the return receipt for certified mail for Appellant's copy of the Area Director's decision. The return receipt shows that Appellant received the decision on May 6, 1997.

Appellant's notice of appeal is addressed to the Area Director. It states in part:

In a conversation with [an employee] from the Division of Real Estate Services, * * * she informed me that I need to send you [i.e., the Area Director] a certified letter, that would begin the process of this appeal.

[The employee] stated that this notice would meet your requirement to file within the 30 days of the notification of your decision of May 5, 1997.

At the Board's request, the Area Director furnished a copy of his May 5, 1997, decision. The decision states:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203 in accordance with the regulations in 43 C.F.R. §§ 4.340 and 4.340 [sic]. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. * * * You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, * * * (2) each

interested party known to you, and (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. * * *

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Although these instructions contain an error in the citation to the Board's procedural regulations, 1/ they clearly advised Appellant that he was to send his notice of appeal to the Board, with copies to the Area Director and others. The Board has consistently held that a notice of appeal is not timely when the appellant has been given the correct appeal information but files his/her notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. E.g., Adams v. Portland Area Director, 30 IBIA 126 (1996); Simon v. Sacramento Area Director, 29 IBIA 59 (1996).

In this case, Appellant's notice of appeal indicates that an Area Office employee gave him oral appeal instructions which differed from the written instructions in the Area Director's decision. The employee's instructions, assuming they were as reported by Appellant, were incorrect.

At this point, the Board could request a statement from the employee concerning the appeal instructions Appellant alleges were given by her. For the reasons discussed below, however, the Board concludes that even if the employee gave the instructions alleged, this appeal could not be deemed timely. Accordingly, for purposes of the remainder of this decision, the Board assumes, but does not decide, that the employee gave the instructions alleged by Appellant.

This case presents a closer question than the usual case in which an appellant fails to follow appeal instructions given in an Area Director's decision. Here, Appellant's failure appears to have resulted, at least in part, from his reliance upon erroneous advice given by the BIA employee. It is well established, however, that the Federal Government is not bound by the erroneous or ultra vires actions or advice of its employees and that such erroneous advice does not grant rights not authorized by law. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); DuBray v. Acting Aberdeen Area Director, 30 IBIA 64 (1996), and cases cited therein.

Further, in this case, even though he was given incorrect information orally, Appellant was given the correct information in writing in the Area Director's decision.

The Area Office employee had no authority to rescind or overrule the Area Director's written instructions. The Board finds that the written

1/ The citation should have read: "43 C.F.R. §§ 4.310-4.340."

instructions in the Area Director's decision were available to Appellant and that they are controlling here.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. 4.1, this appeal is docketed but is dismissed as not being timely filed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge